



CITY OF HAYWARD AGENDA REPORT

PLANNING COMMISSION

MEETING DATE 03/09/00

AGENDA ITEM 2

TO: Planning Commission

FROM: Philip W. Block, Associate Planner

SUBJECT: Intent to Record Notice of City of Hayward Subdivision Ordinance Violation -
2849 Baumberg Avenue (between Industrial Boulevard and Arf Avenue)

RECOMMENDATION:

It is recommended that the Planning Commission declare that the subject parcel, 2849 Baumberg Avenue, is in violation of the City of Hayward's Subdivision Ordinance and State Subdivision Map Act unless evidence is presented to the contrary.

BACKGROUND:

The purpose of this agenda item is for the Planning Commission to consider the evidence presented by New Look Properties, L.L.C. (David Finger), property owner, and determine if the subject property has in fact been illegally divided.

Section 66499.36 of the State Government Code requires cities to file a Notice of Intent to Record Notice of Violation when real property has been divided in violation of the State Subdivision Map Act and the City of Hayward's Subdivision Ordinance (Ord. No. 298 C.S.) adopted May 31, 1960. Therefore we have provided New Look Properties, L.L.C. appropriate notice to appear before you at this meeting to provide conclusive evidence as to why the subject parcel is in fact legal and that this notice should not be recorded with the County Records Office.

Setting

The site is located in the southwestern part of Hayward, on the west side of the Nimitz (I-880) Freeway. It is north of Industrial Boulevard and south of Arf Avenue, on the west side of Baumberg Avenue. See Attachment A map for the location.

The parcel, 2849 Baumberg Avenue, is approximately 7,920 square feet and is zoned Industrial (I), where the minimum required lot area is 10,000 square feet. The General Plan

Map designation for the property is Industrial Corridor. Attachment A shows the existing zoning in the area. Those Baumberg Avenue parcels that are zoned Industrial are in close proximity to the Industrial Boulevard industrial corridor.

Zoning History

In 1957, the area called the "Baumberg Annexation" was made a part of the City of Hayward. Shortly thereafter the properties west of Industrial Boulevard were rezoned to Industrial (I) and the area east of Industrial Boulevard remained a single-family residential zone (RSB6).

On August 20, 1968, the City Council changed the zoning on the subject property and more than half of this block from Single-Family Residential (RSB6) to Industrial (I). The single-family residences on Baumberg Avenue were on deep lots. The intent at the time of the rezoning was to have all the properties that fronted along Industrial Boulevard zoned Industrial (I). At the time of the rezoning, the subject property extended from Baumberg Avenue approximately two-thirds of the way to Industrial Boulevard, making it a prime candidate for the rezoning to Industrial (I). See Attachment B.

In 1996 the City Council appointed the Glen Eden Task Force to prepare a neighborhood plan. Following extensive meetings there was no consideration about changing the existing General Plan designation or Industrial zone designation of the subject site to residential or to change any of the Industrial (I) zoning to residential zoning. The clear intent of the Task Force was to reconfirm previous zoning decisions for Baumberg Avenue.

2849 Baumberg Became An Illegal Lot

Since the above mentioned 1968 rezoning, the subject site and the two lots to the south (the two lots have since merged into one lot) were each subdivided so that the long lots were each divided in two, with one lot that faced Industrial Boulevard and one lot that faced Baumberg Avenue. The lots facing Industrial Boulevard were sold to an industrial user (now owned by Groeniger & Company) and the Baumberg Avenue-facing lots were maintained with the residential homes.

The original 2849 Baumberg Avenue parcel extended further from Baumberg Avenue toward Industrial Boulevard. See map Attachment B. Some time after the above mentioned 1968 rezoning from residential to industrial, the parcel was apparently illegally split in two with the subject parcel becoming approximately 7,920 square feet according to County Tax Assessor data. Under the City of Hayward's 1960 Subdivision Ordinance, this lot split should have been proposed to the City. It would have been denied because it would have created a parcel less than the required 10,000 square feet for industrial lots. Instead it was illegally recorded without the City's knowledge.

The ownership chain of 2849 Baumberg Avenue follows:

1963 Kenneth Porter deeded the parcel to Ruth Porter

- 1970 Ruth Porter deeded the back (southwestern) portion of her property to Mary Ross and retained the portion that fronts on Baumberg Avenue as her residence.
- 1999 Ruth Porter's estate deeded the lot that fronts on Baumberg Avenue to New Look Properties, L.L.C. (David Finger) the current property owner.

See Attachment D for details concerning these changes in ownership.

New Look Properties, L.L.C. purchased the subject site in April 1999 with the objective of rehabilitating the existing abandoned, dilapidated residential structure and selling it as a residential use which is non-conforming in the Industrial District. The residence had been unoccupied at this time for more than 6 months, which prohibits continuance of its non-conforming status. Shortly thereafter, they submitted an application to the City to change the zoning from Industrial (I) to Single-Family Residential (RSB6). Staff has discouraged this zone change because of the City's policy to retain Industrial (I) zoning on the parcel with access ideally from Industrial Boulevard. Mr. Finger has recently asked that the request be tabled. In the meantime, the staff has concluded that based on the information received to date, the subject parcel has been created illegally by an owner prior to New Look Properties, L.L.C. Refer to Attachment C letter. As such, the Zoning Ordinance prohibits development of the property and applications for building permits would be denied.

We have pointed out to Mr. Finger (New Look Properties, L.L.C.) that under the State Subdivision Map Act he has a right to return the illegally created parcel to the previous owner. Another option would be to make the parcel legal. This could be done one of three ways. One would be to sell the parcel to an adjoining property owner thus merging it with another parcel. Another possibility would be to purchase sufficient adjoining property in order to make the subject parcel a minimum of 10,000 square feet. Finally, Mr. Finger could seek approval of a General Plan amendment and zone change from "Industrial" to a residential designation; although, as mentioned above, this strategy would be inconsistent with previous City actions.

Public Notice

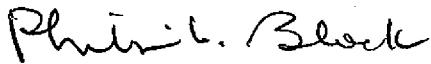
Section 66499.36 of the State Government Code specifies that the current property owner of record be sent a notice of intention to record a notice of violation and that they be given an opportunity to provide evidence as to why the subject parcel is in fact legal and that this notice should not be recorded with the County Recorders Office. We have also noticed the adjacent property owners. The Planning Commission action is appealable to the City Council.

Conclusion

Staff recommends that the Planning Commission declare that the subject parcel, 2849 Baumberg Avenue, is in violation of the City of Hayward's Subdivision Ordinance and State Subdivision Map Act unless evidence is presented to the contrary. This is based on the

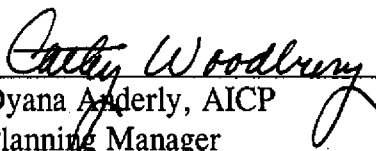
Findings shown on Attachment E. Filing the Notice of Violation with the County Recorder would alert those attempting to purchase the property in the future of its illegal status.

Prepared by:



Philip W. Block, AICP
Associate Planner

Recommended by:


for Dyana Anderly, AICP
Planning Manager

Attachments:

- A. Existing zoning map
- B. Map showing original 19,020 +/- sq. ft. parcel
- C. December 30, 1999 letter to New Properties, L.L.C.
- D. Property ownership deeds
- E. Findings for Intent to Record Notice of Violation

**FINDINGS FOR INTENT TO RECORD NOTICE OF
CITY OF HAYWARD SUBDIVISION ORDINANCE VIOLATION
2849 Baumberg Avenue (between Industrial Boulevard and Arf Avenue)**

1. Section 66499.36 of the State Government Code requires cities to file a Notice of Intent to Record Notice of Violation when real property has been divided in violation of the State Subdivision Map Act and the City of Hayward's Subdivision Ordinance (Ord. No. 298 C.S.) adopted May 31, 1960.
2. The parcel, 2849 Baumberg Avenue, is approximately 7,920 square feet and is zoned Industrial (I), where the minimum required lot area is 10,000 square feet. The General Plan Map designation is Industrial Corridor.
3. On August 10, 1968, the City Council changed the zoning on the subject property and more than half of this block from Single-Family Residential (RSB6) to Industrial (I).
4. At the time of the rezoning, the subject property extended from Baumberg Avenue approximately two-thirds of the way to Industrial Boulevard.
5. Some time after the 1968 City Council rezoning from Residential to Industrial, the parcel was apparently illegally split in two with the subject parcel becoming approximately 7,920 square feet according to County Tax Assessor data.
6. Under the City of Hayward's 1960 Subdivision Ordinance, this lot split should have been proposed to the City. Instead, it was illegally recorded without the City's knowledge.
7. Based on a review of the subject property deeds, the following was determined: In 1970, Ruth Porter deeded the back (southwestern) portion of her property to Mary Ross and retained the portion that fronts on Baumberg Avenue as her residence. In 1999, Ruth Porter's estate deeded the lot that fronts on Baumberg Avenue to New Look Properties, L.L.C. (David Finger), the current property owner.